UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Theatrical Stage Employees Union, Local 2, IATSE, Charged Party, and Complete Crewing, Inc., Charging Party, and United Steelworkers, AFL-CIO-CLC, Local 17 – Decorators, Party-in-Interest.	Case No. 13-CD-185979

POST-HEARING BRIEF OF CHARGED PARTY
THEATRICAL STAGE EMPLOYEES UNION, LOCAL 2

TABLE OF CONTENTS

TABLE OF AUTHORITIES

POST-HEARING BRIEF OF CHARGED PARTY THEATRICAL STAGE EMPLOYEES UNION, LOCAL 2

For the reasons stated in this post-hearing brief, the Board has authority under Section 10(k) of the Act to resolve the dispute between Theatrical Stage Employees Union Local 2 and United Steelworkers, Local 17 – Decorators over who will install and dismantle drape and other textile elements of the "production environment"—that is, stages and spaces in hotel conference and ballrooms where content is presented to an audience, typically through amplified sound and/or video—for Complete Crewing, Inc. This work should be awarded to employees represented by the Stagehands, because all of the factors traditionally examined by the Board are either neutral or favor the Stagehands.

FACTS

This case involves a dispute between the charged party, Theatrical Stage Employees Union Local 2, ("Stagehands" or "Local 2"), and the party-in-interest, United Steelworkers, Local 17 – Decorators ("Decorators" or "Local 17"), over the assignment of certain work by the charging party employer, Complete Crewing, Inc.,. According to owner Floyd Dillman Complete Crewing has for the last twenty-five years been in the business of "providing skilled production labor for business meetings in events, mostly in Chicago, mostly at hotels and convention centers." (Tr. 21.) "Production" in this case refers to the presentation of entertainment or content—such as

a video, speaker, band, or DJ—to an audience, generally incorporating elements such as a stage, screen, or speaker; productions are distinct from classic trade show exhibits with pipe and drape booths. (Tr. 26-27, 29; ER Ex. 3, 4.)

The specific work in dispute is "the installation and dismantling of drapery and other soft goods in the production environment; including the installation and dismantling of pipe and drape at staged events or performances at hotels."[1] (Bd. Ex. 2.) "Soft goods" refers to any scenic element made of fabric or a similarly pliable material like a plastic polymer. (Tr. 227-28.)

The process of preparing the production environment for such a presentation in a hotel begins with unloading equipment from the trucks that bring it there. (Tr. 33, 165.) A crew of Stagehands then unpacks and sets everything up according to the plan made by the production company or agency putting on the event: audiovisual equipment, lighting, sound, rigging, drape,[2] video projections, video cameras, and switching. (Tr. 33, 165, 197-200, 223; L.2 Ex. 8.) Generally things that need to be rigged or hung in the air are done first, and lighting, sound, projection screens, projectors, and drape come in later. (Tr. 33, 241-42.) If drape is hung too early, it tends to get in the way of setting up other elements that it goes behind or connects

[1] This is arguably punctuated incorrectly; the parties clearly agree that the *only* work in dispute is at hotels. (Tr. 13, 17, 104, 113, 123.)
[2] If Decorators have been assigned the drape work, they will unpack it. (Tr. 241.)

to. (Tr. 33.) Once everything is in place, the crew is cut, aside from the Stagehands who remain to operate the technical elements of the show, such as lighting and sound. (Tr. 33, 165.) After the show, the crew takes everything apart and return it to the truck. (Tr. 166.)

There are multiple ways to hang drape: attach it to a metal frame with a crossbar that threads through sleeves in the drape; tie it to the crossbar; or attach it to other elements, such as a lighting truss or other scenic element assembled and installed by the Stagehands. (Tr. 34.) A lighting truss, assembled by Stagehands, might be raised to the ceiling by electric motors hung by Stagehands; the drape would be installed before the truss was raised all the way to the ceiling by Stagehands. (Tr. 197, 199; L.2 Ex. 8 at 1, 3.) In other cases, drape and other scenic elements may be hung from a truss using a lift. (Tr. 197-98; L.2 Ex. 8 at 2.) According to long-time Decorator Dana Levar, sometimes a truss is raised for the sole purpose of hanging drape, and in such cases Decorators may rig the truss, but using cables rather than motors. (Tr. 234-35.) No pictures of such an installation were provided.

The number of employees that Complete Crewing supplies for an event depends on the scope of the work and the client's schedule; the "type" of employees—*i.e.* the specific trades called in—depends on the requirements of the various union contracts and any requirements imposed by a venue. (Tr. 35.) For instance, the McCormick Place convention center in Chi-

cago has specific guidelines about who can do what that require the Employer to use different trades for work at other venues that it would ordinarily assign to Stagehands, such as the installation of scenery. (Tr. 35.)

Complete Crewing's contracts with both the Stagehands and the Decorators cover the disputed work. The Stagehands contract includes within "the jurisdiction of the Union … all production, show, event or attraction carpentry, electrical, audio, staging, rigging, property, special effects, drapery and screen work." (L17 Ex. 1 at 2.) This includes "the installation and carry off of all pipe and drapes and screens used as a scenic element or for booths, exhibits, and displays," as well as "all production, show, event, attraction, booth, exhibit, or display draperies, valances, curtains, hardware, pipes, upholstery and other decorations for any production, show, event, attraction, booth, exhibit or display." (L17 Ex. 1 at 2.) The Decorators contract names as part of the "exclusive work of the Union" all "installation and erection of drapes, fabric, canvas and structural materials used for installation" as well as "the complete dismantle of any work installed under [the Decorators'] jurisdiction at the end of each Show or Event." (ER Ex. 6 at 3.) Complete Crewing's collective-bargaining relationship with Stagehands predates its relationship with the Decorators; Stagehands were doing production pipe and drape work before the company signed with the Decorators. (Tr. 48, 147.)

The prior agreement between Complete Crewing and the Stagehands contained identical jurisdictional language. (L.17 Ex. 2) The language was

expanded from the prior contract to clarify the Union's traditional jurisdiction, and when Dillman saw it he drew a line through the Stagehands' jurisdictional language and proposed a side agreement that paragraphs 1.A through 1.E would not apply, which he signed. (Tr. 90-92, 155-57; L.17 Ex. 2.) He sent the altered document to the Stagehands' Business Manager Craig Carlson, but Carlson refused to sign the side agreement. (Tr. 156, 188, 224; L.17 Ex. 2.) Carlson phoned Dillman and told him that the Stagehands would continue to do the same work as always. (Tr. 189.) The scope of the Stagehands' work for Complete Crewing did not change with the 2010 contract, and the Employer made no similar alterations to the 2014 agreement. (Tr. 189; L.17 Ex. 1.)

The Employer prefers to assign the disputed work to Stagehands Local 2. (Tr. 51.) Dillman noted that Stagehands are already on the job in any production in order to install and remove the other production elements such as lighting, audio, rigging, and scenery, and using those already-present Stagehands to install drape as they are working on those other elements is more productive and less expensive than using another trade. (Tr. 51.) "Stagehands," the Employer testified, "excel at production work and have a different skill set than the decorator's [*sic*] union," and "have a greater sense of urgency in accomplishing the work." (Tr. 51.) That is, overall the Stagehands are more efficient and have a better work ethic than the

Decorators. (Tr. 73.) The Decorators' work ethic was not something the Employer had complained about; Dillman felt it was "baked into the culture" of the Decorators and had to be accepted. (Tr. 74, 136.)

Given that certain elements usually go up before drape, other considerations sometimes required calling in the Decorators much earlier than they were otherwise needed—for instance, after helping unload the drape from the back of the truck, or after installing one small element of drape, such as a valence on a lighting truss that went up early, the Decorators might then be idle for several hours before the remainder of their work could be done. (Tr. 64-66, 81.) When the drape goes up depends upon the other technical elements of the show; for the Stagehands, because it is just another of many tasks in preparing the production environment, drape can be fit in to the flow of the work whenever needed. (Tr. 166-67, 203.) When the Employer used the Decorators, it frequently had to pay the crew for four hours of work that could have been completed in an hour or two. (Tr. 83.) By contrast, the Stagehands "are not idle long," because they are responsible for multiple areas, such as lighting, audio, and scenic, employees working on one area can shift over to work in other areas, so that they are typically engaged throughout their shift. (Tr. 129-30.) Thus, calling in the Stagehands for an eight-hour minimum call may be more efficient than calling in the Decorators for a four-hour call. (Tr. 81-82.)

The Employer clarified that both unions are capable of installing pipe and drape, but Stagehands also have, and Decorators lack, skills and expertise with respect to all the other facets of production, such as "lighting equipment, sound equipment, screens, props, carpeting on stage, decks, and theatrical rigging." (Tr. 59.) The Stagehands have an extensive journeyman and apprentice training program covering all aspects of the craft, both at the Local's training facility in Chicago and at the facilities of equipment providers around the country. (Tr. 167-68.) Over forty percent of Local 2's membership has certifications in the Entertainment Training Certification Program, the highest percentage of any entity in the world. (Tr. 167-68.) Much of this training revolves around safety, including electrical, lighting, audio, and rigging. (Tr. 169-70; L.2 Ex. 1-2.) Also offered is OHSA-10 training, a ten-hour safety class that covers workplace safety practices, (Tr. 172), and training in the use of lifts, which are used to install drape. (Tr. 173.) The rigging training teaches skills in hanging things overhead, from drape—which can itself sometimes be heavy, or even electrified—to equipment for an arena rock concert weighing hundreds of thousands of pounds. (Tr. 173-74.) The Local's training program was less formal prior to 2007, but is not highly structured, and the Local has spent over a million dollars on training in the last few years. (Tr. 183.)

The Decorators also offer their members training in safety and the use of lifts. (Tr. 250-51, 264-65.)

While Decorator Dana Levar opined that the drape work done by the Stagehands was "shameful" in comparison to the Decorators' work, (Tr. 251-52), the Employer does not share his view, finding the Stagehands' work satisfactory and noting that no clients had ever complained about the quality of their work. (Tr. 276.) The Employer also finds the quality of the Decorators' work product acceptable, but has received complaints from clients about their productivity and speed, complaints it had not received about the Stagehands. (Tr. 277.)

The Employer's costs are lower using Stagehands, in part because workers' compensation rates are much lower for Stagehands: three percent of payroll, as compared to over ten percent for Decorators. (Tr. 53.) Additionally, the Decorators have more restrictive overtime rules than the Stagehands. (Tr. 85-68.) But overall, the differences in costs were, Dillman said, "fairly minimal." (Tr. 83.)

Following its expressed preference, the Employer's past practice, outside of venues that have their own internal rules about the division of labor, has generally been to assign the disputed work to the Stagehands, unless Complete Crewing already had Decorators in the building doing pipe and drape for an exhibition, in which case it would bring those Decorators who were already on the clock in to do the drape in the production environment, as well. (Tr. 55-56.) In those hotels, primarily the Sheraton and Hyatt Regency, the Employer has given the Stagehands seventy-five to ninety-three percent of the disputed work over the last three years. (Tr. 56, 105-106, 153.)

(The Decorators have, therefore, also done some of the disputed work for this Employer and other employers over the years. (Tr. 233-240, 247, 266-69; L.17 Exs. 12-14.)) Those percentages were presumably consistent over prior years, as well. (Tr. 154.) Only about 50 jobs annually over the last three years were at such venues without restrictions (Tr. at 107-08); the Employer does most of its work at McCormick Place, which has its own jurisdictional rules, as does the Navy Pier exposition space and two hotels: the Chicago Hilton and the Palmer House Hilton. (Tr. 57-58, 63, 202.) The Chicago Hilton's "rules" are the result of a prior settlement of a jurisdictional dispute between the Stagehands and the Decorators at that hotel, and each Union gets some portion of the drape installation work through that settlement. (Tr. 36-37, 58, 106, 151-52, 154.) The Palmer House has, unusually, a contract directly with the Decorators, and at times hotel personnel interfere and tell the Employer that it must use Decorators to install production drape there. (Tr. 63, 202.)

Stagehands Local 2 also handles soft goods in hotel production environments for dozens of other employers, including Presentation Services, On Stage Audio, Encore, Extreme Reach f/k/a Spotlight Payroll, Freeman Decorating, and PSAV. (Tr. 189-192; L.2 Exs. 3-6.) In other cities where Carlson has worked as the Technical Director for Freeman Decorating doing a large trade show, including Atlanta, Orlando, and Las Vegas, IATSE locals handled all production work, including drape. (Tr. 193.)

In a prior jurisdictional dispute arising under Article XX of the AFL-CIO Constitution between the Decorators and the Stagehands over the assignment of the installation of soft goods at Navy Pier, the AFL-CIO found that awarding the work to the Stagehands did not violate Article XX. (Tr. 194; L.2 Ex. 7.)

Starting in the summer of 2016, the Decorators filed a series of grievances on occasions when Complete Crewing had assigned drape work to the Stagehands. (Tr. 60-61, 139-40; L.17 Ex. 10-13.) Deciding that it was too expensive to keep dealing with the grievances, the Employer notified the Stagehands by email that it would be giving the work—meaning all the work it had been giving the Stagehands seventy-five to ninety-three percent of the time—to the Decorators. (Tr. 61, 144.) The Stagehands responded with a letter threatening to strike if the Employer gave the work to the Decorators. (Tr. 61-62; ER Ex. 7.) Since that time, Local 2 has been performing the disputed work. (Tr. 158.)

ARGUMENT

The Board should award the installation and dismantling of drapery and other soft goods in the production environment, including the installation and dismantling of pipe and drape at staged events or performances at hotels to employees represented by Stagehands Local 2. The statutory prerequisites for a determination by the Board have been met, and the factors

traditionally relied upon by the Board in determining such disputes weigh in favor of awarding the work to the Stagehands.

I. The parties' dispute is properly before the Board.

Stagehands Local 2 acknowledges that there is reasonable cause in this case to believe that it has violated Section 8(b)(4)(D), and therefore the Board is required to make an affirmative award of the disputed work under Section 10(k) of the Act. A union violates Section 8(b)(4)(D) when, in the face of competing claims for work by two labor organizations and no agreed-upon method for resolving them, it threatens to picket in order to coerce the employer to make an assignment in its favor. *International Union of Operating Eng'rs, Local 150*, 364 NLRB No. 132, slip op. at 2 (2016).

A. Section 8(b)(4)(D) applies to the parties' dispute.

In the present case, both the Stagehands and the Decorators claim the work in dispute. The Stagehands acknowledge that there is reasonable cause to believe that its communication to the Employer in October stating its intent "to strike and/or picket Complete Crewing at its facilities and any events it produces in order to enforce and preserve its rightful jurisdiction over production work" constituted means proscribed by Section 8(b)(4)(D) to enforce its claim to the disputed work. (ER Ex. 7.) And the parties have stipulated that no agreed-upon mechanism exists for voluntarily resolving

the dispute. The requirement of reasonable cause to believe that Section 8(b)(4)(D) has been violated has been met. *IUOE Local 150*, 364 NLRB No. 132, slip op. at 2.

B. The Board should reject the Decorators' claims that Section 10(k) does not apply.

At hearing, the Decorators asserted two defenses to the claimed applicability of the statute to the parties' dispute: that the "whole proceeding is contrived" and the result of collusion between the Stagehands and the Employer, and that the Decorators' efforts to "enforce[e] a contract to preserve its work" was protected under the NLRA, such that a 10(k) proceeding and strike threat were "not to be used as vehicles to acquire work under the case law." (Tr. 19, 113-14) Neither of these defenses has merit, and the Board must evaluate the case on the merits.

The record contains no evidence whatsoever of any collusion between the Stagehands and the Employer, and no evidence whatsoever that the Stagehands' threat to strike if the Employer assigned the disputed work to the Decorators was not genuine. Dillman testified that he received the letter from the Stagehands and contacted his attorneys, that the charge was filed the same day, and that he did not alert the Stagehands of this in advance. (Tr. 146.) Despite counsel's assertion that the sequence of events suggests that the Employer asked the Stagehands to threaten to strike so that they could file a charge, it more strongly suggests that the Employer was concerned about a possible strike that it "could not survive," (Tr. 105), and took

prompt action to try to resolve a dispute it felt caught in the middle of. Absent any actual evidence of collusion, the Board must reject the Decorators' argument. *International Union of Operating Eng'rs Local 18*, 363 NLRB No. 184 (2016) (rejecting claims that charged party's strike threats were a "sham" and the result of collusion in the absence of supporting evidence), citing, *inter alia, Operating Eng'rs Local 150 (R&D Thiel)*, 345 NLRB 1137, 1140 (2005) (finding no evidence of collusion where Teamsters told employer it wanted them to file a charge because of Operators' claims for disputed work).

Additionally, this is not a so-called "work preservation" case. In cases where one union has an exclusive contractual right to perform certain work, and the employer unilaterally creates a dispute by assigning that work away from the only group claiming it, that union's efforts to preserve its contractual rights do not violate Section 8(b)(4)(D). *Highway Drivers & Helpers, Local 107,* 134 NLRB 1320, 1323 (1961). In the present case, by contrast, both unions plainly lay claim to the same work. Employees represented by both unions have hung drape and other soft goods in the production environment in Chicago hotels for Complete Crewing. Both unions' collective-bargaining agreements cover the disputed work. These facts alone establish competing claims by the Stagehands and the Decorators over the disputed work. "This case presents a traditional 10(k) situation in which two unions have collective-bargaining agreements with the Employer and each union claims its contract covers the same work." *Laborers' Int'l Union of N. Am., Local 931*, 305 NLRB 490, 491 (1991). *See also Laborers Int'l Union of N. Am.,*

Local 265, 360 NLRB No. 102 (2014) (noting that the Board had not quashed notices of 10(k) hearings "where an employer, that initially used two unions to perform the work, gave the work to one union").

The Decorators seem to be alleging that their grievances in this case are simply efforts to retain the portion of the work that the Employer was already assigning them. But the Decorators filed three grievances that led to this dispute: one from June 2016 over work at the Sheraton, one from September 2016 over work at the Chicago Hyatt, and one from October 2016 over work at the Palmer House. (Tr. 139-39, 142-43; L.17 Exs. 10-12.) Among these three hotels, it was the Employer's practice to assign work to the Decorators exclusively only at the Palmer House; at the Sheraton and Hyatt, a substantial majority of the work went to the Stagehands. (Tr. 56, 105-06.) The Decorators' grievances over the Sheraton and the Hyatt, where they had no exclusive right to perform the work, constitute claims to the disputed work. *Laborers Local 931*, 305 NLRB at 491 (noting that, where both unions have contractual claims to the work, a grievance "constitutes a claim to the work and is one of the relevant factors for the Board's consideration in awarding that work").

Finally, even leaving aside its arguably mistaken claim that the Stagehands had been performing all production work for Complete Crewing, the letter from the Stagehands that gave rise to the charge in this matter seeks jurisdiction over all production work. (ER Ex. 7.) The Stagehands, to the extent that the Decorators have historically performed some of the work in

question, are seeking to acquire work. *Chicago and Ne. Ill. Dist. Council of Carpenters*, 341 NLRB 543, 544-45 (2004) (finding that Carpenters' claim to perform all disputed work that they had never performed exclusively brought dispute within scope of Section 10(k)). *See also Stage Emps. IATSE Local 39*, 337 NLRB 721, (2002), in which the Carpenters asserted that the case involved a "contractual dispute between the Employer and the Carpenters over the preservation of bargaining unit work for Carpenters-represented employees." But, just as in the present case, IATSE, which had historically performed the majority of the work in question, had threatened to picket and strike the employer when the Carpenters filed a grievance, and the dispute was appropriately resolved through a 10(k) hearing. *Id.* (awarding work to IATSE). In short, the Board should reject the Decorators' contention that this case presents a contractual work preservation claim. The case presents a jurisdictional dispute that the Board must resolve under Section 10(k) of the Act.

II. The disputed work should be awarded to the Stagehands.

The Board should award the disputed work to the Stagehands because the various factors that the Board has developed for evaluating jurisdictional disputes—certifications and collective-bargaining agreements, employer preference, employer past practice, area and industry practice, economy and efficiency of operations, and skills, safety, and training—weigh in

the Stagehands' favor. *IUOE Local 150*, 364 NLRB No. 132, slip op. at 2-4 (identifying factors).

A. Certifications and collective-bargaining agreements favor neither union.

Both unions have signed collective-bargaining agreements with the Employer, and both agreements explicitly cover the disputed work. The Stagehands' agreement includes within the Local's work jurisdiction "all production, show, event or attraction … drapery and screen work," including "the installation and carry off of all pipe and drapes and screens used as a scenic element," and "all production, show, event, attraction, booth, exhibit, or display draperies, valances, curtains, hardware, pipes, upholstery and other decorations for any production, show, event, attraction, booth, exhibit or display." (L17 Ex. 1 at 2.) The Decorators' agreement covers "installation and erection of drapes, fabric, canvas and structural materials used for installation" as well as "the complete dismantle of any work installed under [the Decorators'] jurisdiction at the end of each Show or Event." (ER Ex. 6 at 3.) This factor favors neither union.

Evidence introduced by the Decorators relating to *prior* collective-bargaining agreements is irrelevant, as the Stagehands' current agreement has been in force since January 1, 2015, well before the advent of the instant dispute. (L.17 Ex. 1.) *Cf. IUOE Local 150*, 364 NLRB No. 132, slip op. at 2 n.1 (noting that new agreement signed during pendency of dispute clearly awarding disputed work to Operators was due no consideration). In any

event the Stagehands' predecessor agreement with the Employer contained the same jurisdictional language as their current agreement, as the Local rejected the Employer's attempt to modify that language with a side agreement. (Tr. 156, 188, 224.)

B. Employer preference strongly favors the Stagehands.

The Employer expressed a clear preference at the hearing for assigning the disputed work to the Stagehands. The Board gives this preference "substantial weight" in making its assignment. *Laborers Int'l Union of N. Am., Local 265*, 360 NLRB No. 102 (2014) (upholding employer's preference, which was "supported by considerations of economy, efficiency, and skill, all of which are legitimate, traditional factors relevant to awarding work in dispute"); *Laborers' Int'l Union of N. Am*., 359 NLRB No. 89 (2013) (upholding employer's preference); *Iron Workers Local 1*, 340 NLRB 1158, 1163 (2003) (upholding employer's preference).

In the present case, Floyd Dillman explained at length his reasons for preferring to assign the work to the Stagehands, and, as discussed at greater length below, his preference is supported by considerations of past practice, economy and efficiency of operations, and skill and safety. There is no evidence that even suggests that Dillman's testimony did not reflect the Employer's true preference or that the Employer's preference was not its "free and unencumbered choice." *Laborers Local 265*, 360 NLRB No. 102, slip op.

at 6 n.13 (rejecting claim that employer's choice was coerced, where employer had maintained preference for Laborers even in face of pay-in-lieu grievances by Operators). The Employer's preference for the Stagehands weighs strongly in favor of awarding them the disputed work.

C. Employer past practice favors the Stagehands.

Where it has perceived that it had a choice, the Employer has predominantly awarded the work to the Stagehands, although that choice has been constrained at two hotels: the Palmer House and the Chicago Hilton. At the Chicago Hilton, a settlement between the Decorators and Stagehands entitles both parties to perform some of the disputed work, although the unions could not disclose the precise division of labor due to confidentiality language that the Decorators insisted on enforcing. (Tr. 36-37, 58, 106.) At the Palmer House, the Employer has generally awarded drape and other soft goods in the production environment to the Decorators, based not on its preference, but on the hotel's claim that its contract directly with that union required such an assignment. The strength of this claim cannot be verified, since the Decorators did not introduce their alleged contract with the Palmer House. Finally, at the remaining hotel venues in Chicago where the Employer has worked, the Employer assigned a substantial majority of the work (seventy-five to ninety-three percent) to the Stagehands. (Tr. 56, 105-06.) The Decorators' evidence supports this calculation. For instance, the

printout of jobs worked for Complete Crewing in 2015 showed the Decorators working just four events at hotels other than the Chicago Hilton, Palmer House, and Hyatt McCormick Place: NALP at the Sheraton, April 2015; NRA at the Sheraton, May 2015; APPTIO at the Hyatt, October 2015; and Case V at the Sheraton, December 2015. (L.17 Ex. 14.) Those four shows represent eight percent of the approximately fifty events that the Employer did at those hotels. (Tr. 107-08.) Exhibit 13 shows eight shows in 2016, or sixteen percent: SRNT at the Sheraton, March 2016; Oracle at the Hyatt, April 2016; AOHC at the Sheraton, April 2016; TEK Breakfast at the Hyatt, April 2016; AACC at the Hyatt, April 2016; KPMG at the Hyatt, May 2016; Hargrove/Edison at the Sheraton, June 2016; and Cardiovascular Res at the Sheraton, June 2016. (L.17 Ex. 13.) The numbers were greater in 2014, totaling sixteen events, or thirty-two percent if there were also fifty total in that year: Unnamed event at the Hyatt, January 2014; ASRA at the Sheraton, April 2014; GSK at the Hyatt, April 2014; THSNA at the Sheraton, April 2014; Marshall Media at the Hyatt, April 2014; SAVO at the Hyatt, April 2014; Sales Enablement Summit at the Hyatt, April 2014; JUF Womans Division at the Fairmont, May 2014; National Restaurant at the Sheraton, May 2014; AOFAS at the Hyatt, September 2014; Call Center 2014 at the Hyatt, November 2014; Unnamed event at the Sheraton, November 2014; Cancer at the Sheraton, November 2014; and Case V at the Sheraton, December 2014. (L.17 Ex. 9.) In short, Dillman's testimony that he assigned seventy-five to ninety-three percent of approximately fifty events per year over the

last three years to the Stagehands at hotels where he had a choice is corroborated by the Decorators' data, which also shows a trend toward less frequent assignment to the Decorators with the passage of time.

The practice at the Chicago Hilton is irrelevant for purposes of this dispute, because the parties resolved a prior jurisdictional dispute with an agreement that divided the work between them. And he fact that the Employer has felt constrained by the Palmer House's alleged contract with the Decorators and assigned the work there to them is also irrelevant; where the Employer has had a free choice, it has largely chosen to assign the work to the Stagehands. This factor favors assignment of the work to the Stagehands.[3]

D. Area and industry practice favors the Stagehands.

Neither party offered extensive evidence relating to area and industry practice. The Stagehands have dozens of collective-bargaining agreements with other employers under which Stagehands handle soft goods in the production environment in a hotel, some of which were introduced and contained the same broad jurisdictional language as in the contract with Complete Crewing. (Tr. 189-92; L.2 Exs. 3-6.) Additionally, Carlson noted that IATSE-represented employees had handled production drape in other cities where he had worked, including Atlanta, Orlando, and Las Vegas. (Tr.

[3] Even if one takes into account the Employer's assignment of the work to both parties at the Hilton and to the Decorators at the Palmer House, at most this factor does not favor an award of the disputed work to either group of employees. *Laborers' Local 265*, 360 NLRB No. 102.

193.) The Decorators offered testimony that they had eighty-five contracts with employers in "sort of a meeting events industry," (Tr. 258), but offered no evidence that any of those contracts involved the installation and dismantling of drape and other soft goods in the production environment in Chicago hotels, and introduced none of the contracts into evidence. The only evidence in the record establishes that the industry practice is to use the Stagehands for the disputed work.

E. Economy and efficiency of operations strongly favor the Stagehands.

The Employer's preference for assigning the work to the Stagehands was based primarily on the greater economy and efficiency of operations that they afforded.

While the Employer's primary concern was efficiency rather than economy, factors of economy also favored the Stagehands.[4] The Employer testified, and the collective-bargaining agreements show, that the Decorators have more restrictive overtime rules, requiring time and a half after 6:30 p.m., and double time after 8:30 p.m. (ER Ex. 6 at 5); the Stagehands' contract has no such restrictions on weekdays until midnight, after which double time must be paid. (L.17 Ex. 1 at 5.) Additionally, the Employer testified

[4] Despite Decorators' counsel's contention that "wages and benefits … are directly relevant," (Tr. 52), "the Board does not consider wage differentials as a basis for awarding disputed work." *IUOE Local 150*, 364 NLRB No. 132, slip op. at 4. The parties' wage and benefit packages are comparable in any event. (L.17 Ex. 1 at 4, 7; ER Ex. 6 at 6, 12-17.)

that it incurred greater workers' compensation costs when using the Decorators, as its insurer charged over ten percent of payroll to insure the Decorators, and under three percent to insure Stagehands. (Tr. 53.)

Efficiency considerations weigh even more strongly in favor of the Stagehands. Stagehands are more efficient because the production environment requires skills in multiple areas of expertise, including rigging, construction of stages, lighting, audio, video, scenic elements, and drape and soft goods. Because installing and disassembling drape and other soft goods is just one piece of Stagehands' work, they can simply attack that work at the logical time in the flow of the overall preparation of the production environment, which is more efficient than stopping work or getting out of the way while a second trade takes over to install the drape. Because the Decorators must generally be present at the load-in to help push the boxes containing the pipe and drape off the trucks, but then because the drape does not generally need to go up until later in the overall process, they inevitably sit idle. (Tr. 64-66, 81.). *See also, e.g., Laborers Local 265*, 360 NLRB No. 102, slip op. at 8 (finding that economy and efficiency favored Laborers, who could perform other work in addition to disputed work, over Operators, who would dig ditch, sit idle for long periods, and then backfill ditch); *Operating Engineers Local 825 (Walters & Lambert)*, *International Photographers Local 659, IATSE*, 216 NLRB 860, 863 (1975) (IATSE cameraman's ability to do both disputed work of operating video camera and other work of operating film camera favored award to IATSE); *Millwrights Local Union No.*

1102, 160 NLRB 1061, 1071 (1966) (finding that when two trades "are used on the same job to perform interdependent work tasks, some standby time tends to occur," and "to the extent the assignment of all work tasks to a single craft allows for the elimination of such standby time, it provides for greater efficiency and economy in work operations"). Because the installation of pipe and drape is generally a relatively small portion of the task of preparing the production environment, the Decorators are rarely busy for the entire four hours that the Employer is required to pay them; the Stagehands, by contrast, typically remain busy throughout their call despite having a minimum shift of eight hours. The Stagehands' longer minimum call, that is, does not count against the efficiency of assigning the work to the Stagehands.

Finally, the Employer testified multiple times that the Stagehands exhibited a superior work ethic to the Decorators, contributing to their overall efficiency. While the Employer had received complaints about the Decorators' work ethic, it had received no similar complaints about the Stagehands, which "excel at production work" and have a "greater sense of urgency" about their work. (Tr. 51.) While the Decorators noted the Employer had not complained or filed grievances relating to their work performance, the Employer explained that it had long ago accepted the Decorators' work ethic for what it was, "baked into the culture" of the union. (Tr. 74, 136.) The Decorators' own testimony reveals something of the work ethic baked into their culture, explaining that, during time when they are idle waiting

to hang drape on a stage, they might install the drape around a tech table. Initially acknowledging that this task did not take long, Levar ultimately described the process as follows:

> if I can drag this along a little bit. If you want a five-minute egg, how long does it take to get the egg out of the fridge, put it in there, boil the water. You have to haul the equipment over there. I would say the average tech job maybe 20 minutes to a half hour from hauling the equipment over, installing it and bringing it back, yes, half hour, sir.

(Tr. 254.) This testimony perfectly illustrates the work ethic that Dillman believed was baked into the culture of the Decorators: hanging drapes on three-foot poles around a table can be "dragged along a little bit" to take half an hour.

In short, the factors of economy and efficiency strongly favor an award of the disputed work to the Stagehands, in accordance with the Employer's preference.

F. Skills, safety, and training favor the Stagehands.

The factors of skills, safety, and training favor awarding the work to the Stagehands.

The Employer acknowledged that both unions have the basic skills to perform the installation of drape and other soft goods. (Tr. 59.) And while Decorators witness Dana Levar shared his opinion that the Stagehands did a "shameful" job in hanging drape, he gave no specific examples or direct evidence of a job they had mishandled, and the Employer, whose clients must be satisfied with the work product, did not share Levar's view. (Tr.

276.) The Board should not credit Levar's self-serving and unsubstantiated claims about the comparative quality of the parties' work.

The Stagehands have a much broader and deeper skill set than the Decorators, allowing them to perform work in a multitude of disciplines, from carpentry to rigging to audio to video to lighting, and this varied skillset permits the Stagehands to attack the overall production work with greater efficiency, because they can move from rigging a lighting truss to setting the lights to hanging the drape as the logical flow of the work requires. From this perspective, the Stagehands' greater breadth of skills favor awarding the work to them.

Safety and training also favor awarding the work to the Stagehands. Carlson testified at length about the comprehensive training program run by the Union, which included a dedicated training facility at its offices; the Local has spent over a million dollars on training for its members across all the disciplines in which they practice. (Tr. 183.) More importantly, hundreds of members have completed training relevant to the installation of pipe and drape, such as training in personnel lifts (539 members trained), rigging (411), scaffolding (370), and OSHA workplace safety training (212). (L.2 Ex. 2.) This training gives rise to an overall culture of safety, leading Stagehands to take ownership over safety and bring their own safety gear with them, even though it is the Employer's legal responsibility to provide it. (Tr. 55.) The Decorators also receive lift and OSHA training, (Tr. 250-51, 264-65), and their collective-bargaining agreement with Complete Crewing

provides that the Employer "extends a standing invitation to any Union Representative to attend safety and customer service talks, if he or she is available." (ER Ex. 6 at 21.) By contrast the Stagehands' contract requires a 1% Employer contribution to their Journeymen/Apprentice Training Fund, which provides the extensive educational and training programs described above. (Tr. 167; L.17 Ex. 1 at 7.) This overall reputation for, and culture of ownership over, safety and training made an impression on Dillman, who testified that the Stagehands helped him "feel confident … that [his] needs are going to be met beyond just getting the work done, protection for our customers and ourselves." (Tr. 54-55.) *Sheet Metal Workers Local No. 18*, 209 NLRB 470, 471 (1974) (Carpenters' combination of on-the-job and extensive classroom training program compared to Sheet Metal Workers' on-the-job training only, plus prior cost overruns due to Sheet Metal Workers' inefficiency, led to conclusion that skills and training favored Carpenters).

In short, while both unions have the skills necessary to assemble pipe and drape, and while both unions do provide their members with safety and skills training, the breadth of skills and comprehensive approach to safety and training by the Stagehands tips the balance in favor of awarding the work to employees they represent.

CONCLUSION

The jurisdictional dispute between Stagehands Local 2 and Decorators Local 17 is properly before the Board for resolution, and the Board should resolve that dispute in favor of the Stagehands. The Employer prefers the

Stagehands, a preference given substantial weight by the Board. In the present case, the evidence on the other factors examined by the Board supports the Employer's preference, as the Stagehands offer greater economy and efficiency, safety, and skills, and an award to the Stagehands is consistent with the Employer's past practice of giving the Stagehands a significant majority of the work whenever it was free to do so. For all of these reasons, the Board should find that employees of Complete Crewing, Inc. who are represented by Theatrical Stage Employees Union, Local 2, IATSE, are entitled to install and dismantle drapery and other soft goods in the production environment, including the installation and dismantling of pipe and drape at staged events or performances, at hotels.

Respectfully submitted,

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UNION, LOCAL 2, IATSE

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CERTIFICATE OF SERVICE

I, David Huffman-Gottschling, an attorney, certify that I caused a copy of the foregoing document to be served upon the following persons by email on November 18, 2016:

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